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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,434	12/13/2001	Bradley J. Howard	97-0008.01	7606

7590 12/28/2004

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EXAMINER	
NGUYEN, KHIEM D	

ART UNIT	PAPER NUMBER
2823	

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	10/015,434	HOWARD, BRADLEY J.	
	Examiner	Art Unit	
	Khiem D Nguyen	2823	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ they raise the issue of new matter (see Note below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____.
3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *none*.

   Claim(s) objected to: *none*.

   Claim(s) rejected: *6,8-10,19,21-24,34-37 and 49-54*.

   Claim(s) withdrawn from consideration: *none*.
8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

W. DAVID COLEMAN
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicant contend there is no "further" expose "after the mask scheme" in Naik.

In response to Applicant's contention that Naik does not teach or suggest an insulative layer formed on the substrate from the non-exposed portions of the photo-definable layer which remain after the positive mask scheme and are then subsequently converted to the insulative layer through exposure to further electro-magnetic radiation, Examiner respectfully disagrees. Naik discloses a semiconductor device formed using a photo-definable layer 408 in a positive mask scheme (page 3, paragraphs [0023]-[0024 and FIG. 4E) comprising a substrate 400; at least one feature formed on the substrate by converting selected portion of a photo-definable layer to an insulative material through exposure to electro-magnetic radiation 418 in a positive mask scheme and by using non-exposed portions 424 of the photo-definable layer as a mask to form at leat one feature (pages 5-6, paragraph [0058]) and an insulative layer formed on the substrate from the non-exposed portion 424 of the photo-definable layer 408 which remain after the positive mask scheme. Naik does not explicitly disclose subsequently converted to the insulative layer through exposure to further electro-magnetic radiation. However, Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

Thus, for these reasons, Examiner holds the rejection proper.